

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

United States Courts
Southern District of Texas
ENTERED

NOV 02 2005

Michael N. Milby, Clerk of Court

KENNETH GUILLORY,

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Petitioner,

vs.

CIVIL ACTION H-05-3553

DOUGLAS DRETKE,

5-05-CV-0253-C

Respondent.

MEMORANDUM AND OPINION

Kenneth Guillory, a state prisoner, filed an application for habeas corpus relief in which he challenges the calculation of his sentence. An application under 28 U.S.C. § 2241 is the proper vehicle for attacking the manner in which a sentence is being executed. *United States v. Cleto*, 956 F.2d 83, 84 (5th Cir. 1992). Guillory challenges the execution of his sentence, and therefore his application for habeas relief will be treated as one brought under 28 U.S.C. § 2241.

To entertain a § 2241 habeas petition, the district court must, upon the filing of the petition, have jurisdiction over the prisoner or his custodian. *United States v. Brown*, 753 F.2d 455, 456 (5th Cir. 1985); *Blau v. United States*, 566 F.2d 526, 527 (5th Cir. 1978); *McClure v. Hopper*, 577 F.2d 938, 939-40 (5th Cir. 1978), *cert. denied*, 439 U.S. 1077 (1979).

Guillory is currently incarcerated in the Daniel Unit of the Texas Department

of Criminal Justice - Correctional Institutions Division, located in Sneider, Texas, which is in the Northern District of Texas, Lubbock Division. The United States District Court for the Northern District of Texas, Lubbock Division has jurisdiction over Guillory and his custodian.

When a civil action is filed in a court and that court finds that there is a want of jurisdiction, the court shall transfer the action to any other court in which the action could have been brought at the time it was filed. 28 U.S.C. § 1631. The action shall proceed as if it had been filed in the court to which it is transferred on the date upon which it was actually filed in the court from which it was transferred. *Id.*

Because it appears that Guillory inadvertently filed his application in this court, this application should be transferred to the United States District Court for the Northern District of Texas, Lubbock Division in the interest of justice.

The Clerk will transfer this application for writ of habeas corpus to the Clerk of the Northern District of Texas, Lubbock Division, and notify the petitioner of that action.

SIGNED on October 28, 2005, at Houston, Texas.



Lee H. Rosenthal
United States District Judge

TRUE COPY I CERTIFY

ATTEST:

MICHAEL N. MLBY, CLERK

By

Deputy Clerk